

LEGISLATION AND PUBLIC
EDUCATION COMMITTEE

BILL ANALYSIS

Author	Bill Number
California Integrated Waste Management Board	AB 705
Sponsor	Date Amended
Californians Against Waste	June 4, 1997
Related Bills	
AB 84 (Woods) AB 228 (Midgen) SB 1066 (Sher)	

SUMMARY

AB 705 would require state government agencies to develop an integrated waste management program similar to those required to be adopted by cities, counties and regional agencies. It would also include building and construction materials, outdoor furniture, and landscaping materials within the definition of recycled products for purposes of procurement requirements by the Legislature and state agencies, and contractor certification of materials for state jobs. In addition, it would also reenact provisions of law which required all state agencies to purchase certain recycled products if they meet quality and cost considerations.

BACKGROUND

The sponsor of this measure, Californians Against Waste (CAW), wants to ensure that state government agencies do their fair share to contribute to California's recycling and waste reduction requirements. In recent court cases, some state agencies have argued that they cannot be required to implement recycling programs as part of the efforts to comply with the Integrated Waste Management Act (Act). The most notable case involved Pelican Bay State Prison where the courts ruled that because state agencies were not specifically referenced in the Act, they cannot be required to comply with the Act or with local ordinances pertaining to recycling and waste management. The bill is intended to provide a statutory framework within which state agencies may comply with the Integrated Waste Management Act.

The sponsor also believes reinstating provisions relating to the purchase of recycled lubricants, antifreeze, solvents, and paints, and adding provisions relating to the purchase of recycled building and construction products, outdoor furniture, and landscaping materials will enhance the state's recycled product procurement program.

The CIWMB initiates and coordinates a comprehensive statewide waste reduction and recycling program for all state offices and institutions. The Project Recycle program

Departments That May Be Affected		
All state agencies, departments, commissions and boards		
Committee Recommendation	Committee Chair	Date
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conducts evaluations of materials discarded by state agencies; provides training materials and instruction, as well as desktop and intermediate metal collection containers; purchases other equipment for the safe collection of recyclables; and assists with arrangements for the sale of collected materials. As of March 1997, Project Recycle works with programs at 1200 state offices and facilities. During 1996, 28,672 tons of material were collected from state facilities. The CIWMB's Buy Recycled Campaign assists procurement officers at the state's Department of General Services (DGS), other state agencies, local governments and businesses in buying recycled-content products. These include recycled-content paper and plastics, re-refined petroleum, retreaded tires, lead-acid batteries, paint and solvents, glass products, paving materials, and compost products.

Governor Wilson's April 10, 1991 Executive Order W-7-91 requires all state agencies to implement a number of specific practices to reduce waste, reuse materials, recycle, and procure products made with recycled content to help reduce the amount of solid waste going to landfills. The CIWMB and the Department of Conservation (DOC) were also directed to conduct five waste audits at state agencies to determine waste reduction opportunities. The Department of General Services (DGS) is required to develop policies and guidelines for implementing the Executive Order and conduct ongoing educational and training sessions for state agencies, postsecondary education institutions, and local government procurement offices.

In June 1991, an Executive Task Force on Waste Reduction and Recycling was formed to implement the Executive Order. In January 1992, the Task Force sent an advisory report to the Governor detailing existing problems and making recommendations to solve these problems. Some of the recommendations in this report are similar to the proposed statute language in AB 705.

RELATED BILLS

AB 84 (Woods) would require state agencies to give a price preference to products manufactured with rice straw and would require the Department of General Services (DGS) to require persons with whom they contract to use, to the maximum extent economically feasible in the performance of the contract work, these products. Additionally, the bill would require the CIWMB to implement a program, beginning July 1, 1998, for funding claims submitted by state agencies for providing price preferences required by this bill until the date the CIWMB has expended a total of \$100,000 for this purpose. AB 84 passed the Assembly Floor (70-4) on June 5, 1997. The bill has been referred to the Senate Rules Committee for policy committee assignment.

AB 228 (Midgen) would include the Office of State Printing (OSP) in the Department of General Services (DGS) and any other state agency determined by the CIWMB to conduct any printing or publishing operation within the definition of "consumer of newsprint," for purposes of the recycled-content newsprint program administered by the CIWMB. Additionally the bill would include legislative intent that all state agencies, including the OSP, are subject to the recycled-content newsprint requirements and should do everything possible to achieve and exceed those requirements. AB 228 was set to be heard by the Assembly Appropriations Committee on April 2, 1997, but the hearing was put over.

SB 1066 (Sher) would allow a city or county to adjust the base amount of solid waste upon which its diversion requirements are calculated in order to remove the amount of waste generated by federal, state, or other local agencies if certain conditions are met. Additionally the bill would revise the procedures for establishing an alternative to the 50 percent waste diversion requirement by requiring the CIWMB to determine that the 50 percent requirement cannot be met and to consider waste stream information. Further, the bill would require the CIWMB market development plan to include efforts to encourage and promote cooperative regional programs to expand markets for recycled materials. SB 1066 passed the Senate Floor (38-0) on June 5, 1997. The bill has been referred to the Assembly Rules Committee for policy committee assignment.

EXISTING LAW

State Law:

1. Establishes a comprehensive program, administered by the CIWMB, for the management of solid waste in California (Public Resources Code [PRC] §40000, et al.).
2. Requires cities and counties to prepare, submit to the CIWMB for review, and implement plans for the diversion of 25% of solid waste disposed by 1995 and 50% by the year 2000 (PRC §40900-41460).
3. Establishes various recycled product purchase and procurement requirements for state agencies (Public Contract Code [PCC] §12150-12320).

ANALYSIS

AB 705 would:

1. State legislative intent that the State Agency Integrated Waste Management Program will clearly identify the responsibility of state agencies to develop waste reduction and recycling programs and to comply with the diversion requirements of the Act;
2. Add building and construction materials, outdoor furniture, and landscaping materials to the list of materials, goods and supplies, or products containing recycled resources and meeting the specified recycled content requirements for purposes of procurement requirements by the Legislature and state agencies and contractor certification of materials for state jobs;
3. Reinstate, until January 1, 2001, requirements that all state agencies purchase rerefined automotive lubricants, recycled antifreeze fluid, recycled solvents, and recycled paints, only when these products are available, of a fitness and quality equal to their nonrecycled counterparts, and not more costly than the lowest price quoted by suppliers;
4. Require each state agency, on or before January 1, 1999, to develop an integrated waste management program for reducing, reusing, and recycling solid waste;

5. Require each state agency to identify sufficient disposal capacity for waste that is not source reduced, recycled or composted;
6. Allow each state agency to designate at least one waste coordinator who shall be responsible for implementing the agency's integrated waste management program;
7. Require the CIWMB to provide technical assistance to state agencies for the implementation of #4 above;
8. Require each state agency, by January 1, 2000, to divert at least 25% of its waste from landfill or transformation facilities through source reduction, recycling and composting activities;
9. Require each state agency to increase diversion to 50% by January 1, 2002;
10. Mandate procedures to ensure that the facilities for storage, collection, and centralized pickup of recyclable materials are available to each state agency;
11. Define "state agency" as every state office, officer, department, division, board, commission or other agency of the state, including the California Community Colleges and the California State University;
12. Encourage the University of California to implement the provisions of this bill;
13. Require each state agency to report annually to the CIWMB on the amount of solid waste sent to landfills and transformation facilities and the amount diverted through various recycling activities;
14. Require a state agency that is unable to reach the diversion mandates to notify the CIWMB in writing, detailing the reasons for its inability to comply;
15. Require the CIWMB to exempt a state agency from the requirement to prepare an integrated waste management program if the state agency is unable to comply due to low waste generation, poor market conditions, existing contractual obligations or significant cost limitations; and
16. Require the CIWMB to compile and summarize a list of state agencies that are exempted from the requirement to prepare an integrated waste management program and transmit this information to the Governor and the Legislature as part of their annual report.

COMMENTS

STATE AGENCY INTEGRATED WASTE MANAGEMENT PROGRAM

Necessity of bill. A question might be raised about whether the State Agency Integrated Waste Management Program is needed on the scale proposed in this bill. The CIWMB estimates that state facilities generate less than 1% of the state's waste. At present, Project

Recycle, the state's in-house waste reduction program, assists 1200 state facilities and is increasing the number of waste reduction programs by 100-150 programs per year. At this rate, in five years nearly half of all state facilities will have at least waste paper recycling programs and nearly all of the large facilities will have waste reduction programs. In addition, similar bills to AB 705 have been introduced three times since 1992. The Governor vetoed the first bill, the second bill was dropped, and the third bill failed passage in its first committee (see Legislative History section of this analysis).

Potential benefits. This proposal has the potential to benefit all parties with a vested interest in diverting waste from California landfills. Cities and counties would have assistance in meeting their diversion mandates because the state would no longer be exempt. The CIWMB would have statutory backing for other agencies to accept its waste diversion programs and assistance.

Individual State Agency Waste Management Plans. Even though it is not the intent of the Legislature that each state agency's waste management plan would have to be approved by the CIWMB, the CIWMB is required to provide technical assistance to the state agencies in the implementation of their plans. Further, at the request of a state agency, the CIWMB is required to review or approve any solid waste management plan. Many state agencies could submit their plans to the CIWMB. There are 2,718 state facilities and all of these facilities could submit their plans to the CIWMB. Additionally, this bill has amended the definition of "state agency" to include California State University and California Community Colleges. This would add an additional 148 facilities (21 state universities and 127 community colleges) that could possibly submit waste management plans to the CIWMB for review. To narrow the focus of the bill in order to reduce costs, the bill could be amended to require each state agency, rather than every state facility, to submit a solid waste management plan.

Individual Recycling Coordinators for State Agencies. AB 705 provides that each state agency may designate at least one waste coordinator who shall be responsible for implementing the agency's integrated waste management program. Previous versions of AB 705 required each state agency to have at least one waste coordinator. While this change will bring down the fiscal cost of this bill for individual state agencies, it could have the impact of creating more work for the CIWMB since the individual state agencies may need to go to the CIWMB for advice and help in creating their individual solid waste management plan.

Identification of Disposal Capacity. The requirement to identify sufficient disposal capacity for waste that is not source reduced, recycled, or composted is of no apparent use to helping meet diversion goals, because many leased offices (which is two-thirds of all state facilities) have no control over where their garbage is disposed. Identifying disposal locations is the responsibility of the company contracted to collect the garbage, not the state agency.

Report on the Amount of Waste Disposed of in Landfills and the Amount of Waste Diverted. The requirement to report to the CIWMB the amount of solid waste disposed of and diverted would help the CIWMB obtain a better picture of state facility diversion rates. The state has been criticized for not meeting the goals that it has set for local jurisdictions. However, it is difficult to obtain this type of information from leased facilities that combine the state

agency's solid waste with other tenants' solid waste. It would be easier to implement this provision if only state-owned facilities were required to report this information.

Unfunded Mandate. The bill imposes costs of \$179,875 (4.25 PY) in FY 97-98 (6 months) and \$361,250 (4.25 PY) in FY 98-99 and thereafter for annual ongoing costs from the Integrated Waste Management Account (IWMA). This bill would impose a new administrative cost on the CIWMB. As a result of the successful diversion of solid waste from California's landfills, revenues to the Integrated Waste Management Account are declining, and less money is available to implement CIWMB programs. Enactment of this legislation could result in less funding for other vital CIWMB programs.

Currently, state agencies are not required to develop or implement a comprehensive integrated waste management program. Executive Order W-7-91 requires all state agencies to provide for collection and recycling of the typical containers, paper, cardboard, etc, and the CIWMB operates its Project Recycle program for state agencies which primarily focuses on recycling. AB 705 requires the CIWMB to provide technical assistance to state agencies to help them develop integrated waste management programs. The CIWMB would be required to review or approve any state agency plan or program if requested to do so by a state agency. It would be very expensive to review these programs.

Report Required for the CIWMB. If a state agency is unable to comply with the requirements of this bill, the state agency is to notify the CIWMB in writing, detailing the reasons for their inability to comply. The CIWMB would be required to exempt the state agency's noncompliance if the agency is unable to comply due to low waste generation, poor market conditions, existing contractual obligations, or significant cost limitations. All state agency requests for exemptions would have to come before CIWMB; so an agenda item for these exemptions would have to be prepared. The CIWMB would be required to compile and summarize the exemptions and transmit this information to the Governor and the Legislature as part of their annual report.

However, since the passage of AB 116 (Speier, Chapter 970, Statutes of 1996), no state agencies are required to prepare and submit any written report to the Legislature or the Governor until October 1, 1999, unless it is among a list of specified reports or certain mandated reports exempted from the moratorium. Due to fiscal conditions, the CIWMB has elected to not prepare an annual report, but to prepare an executive summary instead.

Clarification Needed on Non-Compliance. It is unclear whether a state agency that has been granted an exemption from preparing a solid waste management plan needs to resubmit their notification of noncompliance on a yearly basis or if this is one-time occurrence. By having the CIWMB report on an annual basis the number and reasons for state agencies not in compliance with this bill, it would seem to indicate that state agencies need to apply for noncompliance annually.

Clarification on Reaching Diversion Requirements. It is not unclear whether each individual state agency is required to meet the 25% and 50% diversion requirements or whether the state agencies, as a whole body, need to meet this requirement.

11 Timelines. The state agencies are to develop, in consultation with the CIWMB, an integrated

waste management program by January 1, 1999. AB 705 requires each state agency to meet the same standard that is required of local jurisdictions in only five years, whereas the locals have close to ten. This raises the question of how successful state agencies will actually be. Instead of the five-year deadline, AB 705 could be amended to move the dates to a more appropriate timeline.

Cost savings. AB 705 provides that any cost savings as a result of a state agency's implementation of the program shall, to the extent feasible, be redirected back into the program to fund program implementation and administration costs. Existing law requires revenues from the sale of recyclables to go back to the Integrated Waste Management Account (IWMA) (PCC §12167). In addition, there is a provision that allows each state agency to seek approval from the CIWMB to retain up to \$2,000, and to spend revenues in excess of \$2,000 if appropriated by the Legislature (PCC §12167.1). It may be difficult to define the cost savings for each individual state agency, because most state facilities are shared with other state agencies. However, if state agencies can realize cost savings and use that cost savings for their recycling program, this could be an incentive to implement waste diversion programs.

BUY RECYCLED

Material Versus Application. AB 705 proposes to revise procurement by state agencies, the Legislature, and contractor certification of materials for state jobs by adding three types of products -- building and construction materials, outdoor furniture, and landscaping materials -- to the 11 product categories already identified. Although these types of recycled-content products should be purchased by state agencies, it seems unnecessary to specify these products. The current 11 product categories are defined by the type of material they are made from (paper, plastic, glass, etc.). The proposed categories are defined by the application or use of the product. This could cause great confusion because many products could be categorized by material type and by application. For instance, a plastic lumber bench could be reported under the plastic category or the outdoor furniture category. This would make reporting by all state agencies and management of the State Agency Buy Recycled Campaign (SABRC) very difficult. To clarify what type of recycled-content material is included under each category, an amendment could be made that would specify this information.

Category	Types of Recycled-Content Material
Landscape Materials	Compost. Soil amendments. Soil additives.
Building and Construction Materials	Recycled glass. Recycled cement and asphalt. Rubberized asphalt composed of crumb rubber from waste tires. "Plastic" wood composed of recycled plastic material from recycled soda bottles and milk containers. Metals from aluminum and tin cans.
Outdoor Furniture	Recycled glass. Plastic composed of recycled plastic material from recycled soda bottles and milk containers. Metals from aluminum and tin cans.

SUGGESTED AMENDMENTS

The committee may wish to consider the following amendments:

1. To narrow the focus of the bill to reduce cost, the bill could be amended to require each state agency, rather than every state facility, to submit a solid waste management plan.
2. To more easily obtain information on the amount of waste disposed of in and diverted from solid waste landfills, require only state-owned facilities to report this information.
3. Clarify whether a state agency that has been granted an exemption from preparing a solid waste management plan needs to resubmit their notification of noncompliance on a yearly basis or if this is a one-time occurrence.
4. Clarify whether each individual state agency is required to meet the 25% and 50% diversion requirements or whether the state agencies, as a whole body, need to meet this requirement.
5. Define what type of recycled-content material is included under the following categories: landscape materials; building and construction materials; and outdoor furniture.

LEGISLATIVE HISTORY

AB 705 was introduced on February 26, 1997. It passed the Assembly Consumer Protection, Governmental Efficiency, and Economic Development Committee (11-1) on April 8, 1997; passed the Assembly Appropriations Committee (13-8) on May 30, 1997 and passed the Assembly Floor (60-18) on June 5, 1997. The bill is currently in the Senate Rules Committee for policy committee assignment.

Support: Californians Against Waste (sponsor)
Louisiana Pacific
Browning Ferris Industries
California Landscape Contractors
California Refuse Removal Council
E-Coat Recycled Paint (Division of Kelly-Moore Paints)
City of San Rafael
County of Santa Clara
Norcal Waste Systems, Inc.

Opposition: None received

AB 705 is similar to AB 3285 (Davis) of 1996, AB 1902 (McPherson) of 1995, and AB 3689 (Gotch) of 1992. AB 3285 failed passage in the Assembly Natural Resources Committee. Assemblyman McPherson dropped AB 1902 after it reached the Assembly Appropriations Committee. The California Integrated Waste Management Board (CIWMB) took no position on AB 3285 and AB 1902. The CIWMB supported AB 3689, but it was vetoed by the Governor. In his veto message, the Governor stated that the bill was duplicative of administrative efforts and "does not offer state government the flexibility it needs to meet our challenging, yet realistic, recycling goals."

FISCAL AND ECONOMIC IMPACT

AB 705 would impost costs of \$179,875 (4.25 PY) in FY 97-98 (6 months) and \$361,250 (4.25 PY) in FY 98-99 and thereafter for annual ongoing costs from the Integrated Waste Management Account (IWMA).

These costs would be for technical assistance to state agencies as they develop and implement their integrated waste management program; the costs the CIWMB would incur to develop its own integrated waste management program and do its own diversion calculations; review of the plans if requested to do so by individual state agencies; and possible additional requests for technical assistance that may come to the CIWMB from those state agencies who decide not to appoint their own waste reduction and recycling coordinator, but intend to rely on the CIWMB for technical assistance. It is unclear what role the CIWMB would take to help each individual state agency identify sufficient disposal capacity for waste that is not source reduced, recycled, or composted.

Additionally, the costs would cover the CIWMB's review for compliance to the program and to review exemptions, compile and annually report on state agencies exempted from this program. Finally, this would cover the costs of revision of the State Agency Buy Recycled Campaign packet (SABRC), outreach and presentation forms, certification, and reporting forms and for technical assistance provided to state agencies because of the confusion with regard to the newly added categories for state procurement (landscape materials, building and construction materials and outdoor furniture).

As a result of the successful of diversion of solid waste from California's landfills, the CIWMB is experiencing declining revenues due to decreased tipping fees. For this reason,

less money is available to implement CIWMB programs. Enactment of this legislation could result in less funding for other vital CIWMB programs.

Local agencies may lose revenues if state agencies do not participate in efforts to reduce or recycle solid waste.

Board	Author	Bill Number
California Integrated Waste Management Board	Wayne	AB 847
Sponsor	Related Bills	Date Amended
Appliance Recycling Centers of America		June 2, 1997

SUMMARY

AB 847 would provide that a hazardous waste generator is any person who removes from a major appliance any material that requires special handling and is a hazardous waste. It would require the Department of Toxic Substances Control (DTSC) or its enforcement agency to incorporate the regulation of materials that require special handling and are hazardous wastes into existing inspection and enforcement activities. AB 847 would require the DTSC to transmit a copy of the *Appliance Recycling Guide*, published by the California Integrated Waste Management Board (CIWMB), and any other materials determined to be necessary to ensure compliance with the management of hazardous wastes removed from discarded appliances, to specified persons and agencies.

BACKGROUND

The sponsor of AB 847, Appliance Recycling Centers of America (ARCA), is a nationwide company that provides comprehensive appliance management services -- collection; the removal of all hazardous materials, including CFC/HCFC refrigerant gases, PCBs, mercury and transmission and compressor oils; and proper recycling or disposal of these materials and metals according to local, state, and federal laws and regulations.

ARCA came to California in 1993 and opened facilities in Compton and Oakland, largely due to the state's law requiring removal of hazardous materials from appliances before they are baled or shredded for metals recycling or disposal. ARCA closed their Oakland facility in October 1996 due to lack of business which they feel is attributable to the state's failure to implement or enforce this law at scrap metal recycling centers. ARCA believes that many entities responsible for managing the nearly 5 million unwanted major household appliances generated by consumers in California each year are not properly removing hazardous materials from appliances and managing them as hazardous waste, as required by current law.

Departments That May Be Affected		
Department of Toxic Substances Control, Air Resources Board		
Committee Recommendation	Committee Chair	Date
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- ARCA has introduced AB 847 to restore "a level playing field" by placing the requirement to remove hazardous materials from appliances in the Health and Safety Code (HSC), which governs the Department of Toxic Substances Control (DTSC) and local hazardous waste management agencies. Presently, that requirement exists only in the Public Resources Code (PRC), governing solid waste management. According to ARCA, it is not surprising that state and local hazardous waste agencies, as well as appliance collectors and processors, may be unaware of this requirement, since it is in a code that does not govern their hazardous waste management activities.

The Association of Home Appliance Manufacturers opposes AB 847, believing that ARCA has grossly exaggerated the disposal hazards of discarded appliances. They cite the CIWMB's Metallic Discards Management Plan (August 1993), which states that "existing laws and the current economic climate together provide generally adequate regulatory control and economic incentives that special materials contained in major appliances. . .do not create a large problem in California." They state that the certification, registration, and reporting requirements proposed by AB 847 are cumbersome and unnecessary, with no evidence of widespread violation of current requirements. Further, they state that if compliance is the goal, the focus should be on educational outreach, including a broader distribution of the *Appliance Recycling Guide* developed by the CIWMB.

EXISTING LAW

State Law:

1. Defines "major appliance" as any domestic or commercial device, including, but not limited to, a washing machine, clothes dryer, hot water heater, dehumidifier, conventional oven, microwave oven, stove, refrigerator, freezer, air-conditioner, trash compactor, and residential furnace (PRC Section 42166).
2. Defines "materials which require special handling" as sodium azide canisters in unspent air bags which are determined to be hazardous by federal and state law or regulation, encapsulated polychlorinated biphenyls (PCBs) in major appliances, and chlorofluorocarbons (CFCs) injected in air conditioning/refrigeration units or any other hazardous waste or hazardous material regulated by the Department of Toxic Substances Control (PRC Section 42167).
3. States that on or after January 1, 1994, materials which require special handling shall be removed from major appliances and vehicles in which they are contained prior to crushing for transport or transferring to a baler or shredder for recycling (PRC Section 42175).
- 17 4. On or before January 1, 1993, requires the CIWMB to develop and submit a management plan to the Legislature for the removal of materials which require special

handling from major appliances and vehicles. The plan is required to specify how the removal of materials which require special handling should be financed and administered, as well as what, if any, state agency approvals are to be required of those persons removing these materials (PRC Section 42176).

Federal law (Clean Air Act):

1. Requires the recovery and recycling of refrigerant gases (CFCs, hydrochlorofluorocarbons (HCFCs) hydrofluorcarbon (HFCs) and non-CFC replacements) contained in refrigerated appliances such as freezers, air conditioners, heat pumps and water coolers (Clean Air Act, Section 608).

ANALYSIS

AB 847 would:

1. State Legislative findings and declarations that:
 - a. Discarded major appliances are solid waste managed pursuant to the California Integrated Waste Management Act, but hazardous materials contained in major appliances become hazardous waste when released or removed from the appliance when it is discarded;
 - b. To avoid hazardous waste contamination of natural resources and reusable materials, and to avoid illegal disposal of any hazardous waste released or removed from a major appliance, it is in the interest of the State to ensure that those materials are removed from major appliances before they are crushed for transport or transferred to a shredder or baler for recycling, and are managed in accordance with applicable hazardous waste law;
 - c. Any materials that require special handling are required to be removed from major appliances per PRC §42175;
2. State that "major appliance" as used in new Article 10.1 of Chapter 6.5 of Division 20 of the Health and Safety Code (HSC) has the same meaning as in Section 42166 of the PRC;
3. State that "materials that require special handling" as used in the new HSC citation in #2 above, has the same meaning as in Section 42167 of the PRC;
4. State that a hazardous waste generator is any person who, pursuant to PRC §42175, removes from a major appliance any material that requires special handling and is a hazardous waste. A hazardous waste generator must therefore comply with current

hazardous waste law and changes proposed by this bill as it applies to generators of hazardous waste;

5. State that all materials that require special handling that have been removed from a major appliance pursuant to PRC §42175, and that are hazardous wastes, shall be managed according to current hazardous waste law and changes proposed by this bill;
6. Require DTSC and local officials authorized to enforce the hazardous waste control laws to incorporate the regulation of materials that require special handling and are hazardous waste when removed from a major appliance into existing inspection and enforcement activities;
7. Require DTSC and local officials to coordinate their activities as needed to identify and regulate materials that require special handling and are hazardous waste when removed from a major appliance, that are transported from one jurisdiction to another;
8. To implement #6 and #7 above, require DTSC to develop a statewide list of appliance recyclers, used appliance dealers, solid waste facilities, metal scrapyards, and others who may be connected with people who remove materials that require special handling from major appliances. Require DTSC to notify persons on the list of the requirements and steps for compliance under current hazardous waste law and changes proposed by this bill;
9. Require the DTSC to transmit a copy of the *Appliance Recycling Guide*, published by the CIWMB, and any other materials determined to be necessary to ensure compliance with current hazardous waste law and changes proposed by this bill, to the following persons or agencies:
 - a. People who apply for a generator identification number indicating that they are involved with any activities regulated by this bill;
 - b. The local officers and agencies authorized to enforce the current hazardous waste law and changes proposed by this bill;
10. Require DTSC to transmit the generator identification number of any person identified under #8 and #9a above to the appropriate local officers and agencies authorized to enforce current hazardous waste law and changes proposed by this bill;
11. Require DTSC to make information available upon request regarding the implementation of this article, including the list of persons notified pursuant to #8 and #9a above, information on inspection and enforcement, and other information related to the record of compliance with the changes proposed by this bill, subject to the California Public Records Act;

12. Clarify that "materials that require special handling" in PRC §42167 also includes used oil, and mercury found in switches and temperature control devices in major appliances;
13. Delete a general (unclear, unenforceable) requirement that any hazardous waste or hazardous material regulated by DTSC is required to be removed from used major appliances before processing.

COMMENTS

Imprecise Legislative finding. The current version of AB 847 states in its Legislative findings and declarations section that discarded major appliances are solid waste managed pursuant to the Integrated Waste Management Act (IWMA). The CIWMB's authority over used appliances is limited to their disposal at solid waste facilities. However, the vast majority of these appliances go to scrap metal dealers/recyclers if they cannot be refurbished or reused as appliances. If AB 847 were to pass in its current form, it could be interpreted to mean that metal scrap yards and other recycling sites that handle these materials would be considered solid waste handling facilities. If this occurs, many salvagers might choose not to handle these materials rather than be considered waste handlers. AB 847 should be amended to delete language stating that discarded major appliances are solid waste.

Metallic discards at landfills. Very few "metallic discards" go to landfills because the scrap metal has value. The CIWMB estimates that approximately 39.8 million tons of solid waste are disposed of at solid waste facilities. Of that total, approximately .5 percent or 195,639 tons of metallic discards are disposed in California's landfills. They generally go to scrap metal dealers/recyclers if they cannot be refurbished or reused as appliances, to be sold for their scrap metal value. The average price for white goods scrap metal in California is \$36 per ton. The only "enforcement" the CIWMB or its Local Enforcement Agencies (LEAs) would do regarding requirements to remove hazardous waste from appliances would be to regulate appliances being disposed in landfills without these materials removed. According to CIWMB, there does not appear to be a problem at solid waste facilities because at landfills, contracts are generally in place to remove the hazardous materials and/or the appliances are diverted for disposal to a scrap metal dealer.

Metallic discards at metal recyclers. The problem appears to be at the metal recycler where appliances are allegedly being crushed without removal of the hazardous materials. Once this occurs, it is a violation of hazardous materials/hazardous waste management law, as well as a violation of the federal Clean Air Act (for CFCs). These are matters that the CIWMB has no jurisdiction over. Also, the CIWMB does not presently have any authority to require scrap metal recyclers to change their practices.

Authority. The CIWMB's authority over used appliances is limited to their disposal at solid waste facilities. Specifically, the prohibition on disposal states that after January 1, 1994, no solid waste facility shall accept for disposal any major appliance, vehicle, or other metallic discard which contains enough metal to be economically feasible to salvage as determined by

the solid waste facility operator. The CIWMB does not regulate metal recyclers who process the white goods for scrap metal value because they are not handling solid waste. These activities would be considered "de-manufacturing," which the CIWMB decided in 1996 was to be outside of its regulatory tiers (other examples of "de-manufacturing" are couch and mattress recyclers, auto dismantlers, and circuit board recyclers).

Enforcement. The Metallic Discards Act provided no specific mechanism for enforcement of its provisions. Materials requiring special handling (hazardous waste and hazardous material) removed prior to recycling and disposal are covered under the general hazardous waste control laws administered by the DTSC. The ban on disposing used appliances to landfills is covered under laws governing solid waste facilities administered by the CIWMB. The U.S. Environmental Protection Agency (USEPA) is enforcing the provisions within Section 608 of the federal Clean Air Act regarding the processing of air-conditioning and refrigeration equipment. USEPA is performing random inspections, responding to tips, and pursuing potential cases against violators.

It is possible that a regulatory program for metal recyclers could impose costs that make it difficult to sell scrap metal. The average price for white goods scrap metal in California is \$36 per ton. If the cost to regulate white goods is close to, or higher than \$36 per ton, it will no longer be profitable to recycle white goods and the result could be illegal disposal.

Hazardous waste generators. AB 847 states that a hazardous waste generator is any person who removes from a major appliance any material that requires special handling and is a hazardous waste. Some metal recyclers may refuse to accept the appliance with the materials requiring special handling included, and a homeowner may remove the materials. The bill could create confusion if a homeowner in this situation is classified as a hazardous waste generator. AB 847 should be amended to state that the management of hazardous wastes removed from discarded appliances as referenced in the bill does not apply to household hazardous waste.

Metallic Discards Management Plan. The Metallic Discards Act in the PRC required the submittal of a management plan to the Legislature for the removal of special materials from vehicles and major appliances. This mandate was satisfied by a plan prepared by the CIWMB and a report prepared by Science Applications International Corporation (SAIC) detailing the current activities of the metallic discards processing industry in California in August 1993. The final report of the Metallic Discards Management Plan lists several CIWMB actions taken in response to the recommendations made:

- a. LEA Advisory: The CIWMB developed and sent out a LEA Advisory letter to all LEAs and interested parties which described the regulatory mandates for metallic discards management in California with an attachment titled, "Metallic Discards Q & A," which listed answers to the most commonly asked questions.
- 21 b. Appliance Recycling Fact Sheet: The CIWMB developed an Appliance Recycling Sheet which was sent out to interested parties regarding the subject of metallic discards

management in California. It briefly explained the Metallic Discards Act mandate, the landfilling problems of metallic discards, other concerns, and how to reuse, recycle and purchase appliances.

- c. *Appliance Recycling Guide:* The CIWMB developed this recycling guide to assist those persons in the disposal and recycling sectors who intend to process appliances and the special materials contained within them. This guide is not intended for use by the home repair person, known as the do-it-yourselfer. The guide focuses on the: (1) identification of special materials which require removal, (2) special materials (i.e. refrigerants, polychlorinated biphenyl (PCB), oils and lubricants, and mercury) removal and extraction methods, (3) identification of health and safety hazards in removing and handling special materials, and (4) management of special materials in accordance with state and federal regulations.

Hidden costs. AB 847 requires DTSC to develop a statewide list of appliance recyclers, used appliance dealers, solid waste facilities, metal scrapyards, and others who may remove or do business with those who remove materials that require special handling from major appliances. The CIWMB can provide DTSC with any names it already has to start such a list, and DTSC can complete it. Further, AB 847 states that the DTSC will transmit a copy of the *Appliance Recycling Guide*, published by the CIWMB, to people who indicate they are involved with removal of hazardous materials from major appliances and local officials who enforce hazardous waste law. The CIWMB can provide DTSC with a master copy and permission to print and provide the copies.

Metallic Discards Management Task Force. The CIWMB also convened a Metallic Discards Management Task Force which met twice to discuss and share information regarding the recycling of metallic discards. The Task Force consisted of approximately 12 members representing the regulatory, environmental, industrial, and public sectors. The outcome of the meetings assisted the CIWMB to develop literature on the proper processing of metallic discards, identify appliances of concern, identify the need for training and certification requirements of persons processing metallic discards, address issues regarding special materials, etc.

Metallic Discards monitoring. The CIWMB also performed non-regulatory monitoring for a six month period regarding the effectiveness of the Metallic Discards Act. A survey of both Northern and Southern California appliances repair shops, processing facilities, metal scrap facilities, and local governments was performed. The results showed that since the Metallic Discards Act went into effect, a few processing facilities, metal scrap facilities, and local governments have seen an increase in appliance salvaging/recycling while others have seen no increase.

SUGGESTED AMENDMENTS

The Committee may wish to consider the following amendments:

1. Delete Legislative intent language stating that discarded major appliances are solid waste; and
2. State that Article 10.1, "Management of Hazardous Wastes Removed from Discarded Appliances," is not applicable to household hazardous waste.

LEGISLATIVE HISTORY

AB 847 was introduced on February 27, 1997. It passed the Assembly Environmental Safety and Toxic Materials Committee (6-0) on April 1, 1997, passed the Assembly Appropriations Committee (11-5) on April 9, 1997, and passed the Assembly Floor (51-27). It has been referred to the Senate Rules Committee for assignment to policy committee.

Support: Appliance Recycling Centers of America, Inc. (ARCA) (sponsor)
 Planning and Conservation League
 Californians Against Waste
 Sierra Club
 Waste Management, Inc.
 Alameda County Waste Management Authority/Source Reduction and
 Recycling Board
 Safety-Kleen Corporation

Opposition: Association of Home Appliance Manufacturers
 Steel Recycling Institute

FISCAL AND ECONOMIC IMPACT

AB 847 could have a fiscal impact on the CIWMB if it is interpreted to mean that metal scrap yards and other recycling sites that handle discarded major appliances are solid waste handling facilities. If this were the case, the CIWMB may be required to provide direction to its Local Enforcement Agencies (LEAs), and potentially slot appliance activities into tiers. CIWMB staff may have to be trained in the proper handling of the identified hazardous materials. CIWMB staff and LEAs may have to visit and/or inspect operations currently not under CIWMB/LEA jurisdiction. The fiscal impact at this point is impossible to calculate, given the uncertainty of the bill's interpretation and the unknown number of metal scrap yards and other recycling sites.

**SUGGESTED AMENDMENTS TO AB 847 (WAYNE)
AS AMENDED JUNE 2, 1997**

Page 3. strike lines 4-13 and insert:

(a) Discarded major appliances may contain hazardous materials that become hazardous waste when released or removed from the appliance in the discard or recycling process.

Page 4. line 26, after "hazardous waste." insert:

This article does not apply to household hazardous waste.

Board California Integrated Waste Management Board	Author 	Bill Number AB 1055
Sponsor Author	Related Bills AB 705 (Strom-Martin) SB 2 (Thompson)	Date Amended May 19, 1997

BILL SUMMARY

AB 1055 would enact the Safe Playground Facilities and Recycled Materials Act of 1997. The Act would establish the safe playground facilities and recycled materials grant program administered by the Department of Health Services (DHS), to provide grants to public agencies to upgrade, repair, refurbish, install, or replace public playground facilities. Additionally, the bill would provide that grant funds would be used for the improvement or replacement of playground equipment or facilities through the use of recycled materials.

BACKGROUND

Purpose of the Bill. According to the author, enactment of AB 1055 will reduce the number and severity of childhood injuries by establishing a grant program to assist public agencies with the costs of upgrading and improving unsafe public playgrounds. It will also improve the environment by creating a new market for recyclable materials.

Current State Law. The Department of Health Services (DHS) was required to adopt design regulations by January 1992 for California's public playgrounds. This law requires public entities to upgrade their playgrounds to meet these new regulatory standards by January 1, 2000. However, DHS has not completed these regulations because the \$75,000 allocated to assist DHS to develop these regulations was vetoed. DHS anticipates circulating the regulations for public comment early next year--six years after the required date.

Federal Guidelines and Equipment Specifications for Playground Equipment. There are no federally mandated national standards for the design and construction of outdoor play equipment. The Consumer Product Safety Commission (CPSC), the Consumer Federation of America (CFA) and the American Society of Testing and Materials (ASTM) are providing some guidelines to make playground equipment safer:

Departments That May Be Affected

Department of Health Services, State Department of Education, California Integrated Waste Management Board and Department of Parks and Recreation

Committee Recommendation	Committee Chair	Date
		25

- The Consumer Product Safety Commission's *Handbook for Public Playground Safety* contains the Federal guidelines for the design and construction of playgrounds. These guidelines, although widely accepted and adhered to, are not mandatory.
- The Consumer Federation of America's *Report and Model Law on Public Play Equipment and Areas* provides a blueprint for designing and building public playgrounds. The report contains safety and design criteria which expand on and are more stringent than certain CPSC guidelines.
- The American Society of Testing and Materials, a private standards development organization, has developed comprehensive, although voluntary, technical specifications for public playground equipment manufacturers.

Federal Americans with Disabilities Act (ADA). The ADA mandates that public spaces be accessible to disabled persons. Consequently, outdoor recreational facilities, including playgrounds, must comply with ADA requirements.

CIWMB Targeted Recycled-Content Products for Playground Applications. The CIWMB has previously targeted recycled-content products for playground applications. In FY 1996-97, the CIWMB allocated \$332,579 and in FY 1997-98 the CIWMB will allocate \$300,000 to local governments and school districts for installation of playground cover containing crumb rubber from waste tires. The money for these grants came from the California Tire Recycling Management Fund. The CIWMB provided 50 percent matching grants for the installation and material costs of rubberized mats and pour-in-place surfacing (manufactured from California waste tire rubber) placed underneath and around playground equipment. Pour-in-place projects using a thin layer of synthetic rubber over tire rubber base are also acceptable.

CIWMB Programs That Promote the Use of Recycled-Content Products. Other CIWMB programs have also been implemented to promote the use of recycled-content products including the following:

- Recycling Market Development Zone (RMDZ) Loan Program. The program promotes the recycling of materials and the use of recycled feedstocks by offering low-interest loans to businesses which site in one of the 40 zones throughout California. The RMDZ program operates very similarly to traditional economic enterprise zone programs, providing technical and financial assistance to businesses that site or expand within the zones. Loans may be made for 50 percent of project cost, or up to \$1 million. The Recycling Market Development Loan Program is funded by an annual loan of \$5 million from the Integrated Waste Management Account (IWMA). These annual loans must be repaid in full, with interest, when the program sunsets on July 1, 2006. The RMDZ loan program has contributed significantly to the diversion of secondary materials from landfills. For the calendar year 1995, a total of 204,247 tons of secondary materials were consumed by companies awarded RMDZ loans by the CIWMB. Since 1993, a total of 1,384,609 tons of secondary materials have been consumed by companies whose loans were approved and funded by the CIWMB. These RMDZ businesses have saved or created about 610 jobs.

- Buy-Recycled Program. The focus of this program is to increase the procurement of recycled-content products and to report on the purchasing successes, trends, and barriers encountered by State agencies and private companies. The Buy-Recycled Program promotes the use of recycled-content products and has developed a data base currently available for identifying products containing recycled materials.
- The Public Education and Program Implementation Branch. This branch assists school districts to set up waste reduction and recycling programs and develops waste management curriculum for use in teaching students about waste management and recycling. The branch does not assist school districts in purchasing materials with recycled content.

Safety of California Playgrounds. Each year in California, 20,000 children are injured on playgrounds. Many of them suffer injuries that are fatal. In the school environment, playground accidents are the leading cause of injuries to students aged 5 to 14. Earlier this year CFA, in conjunction with the California Public Interest Group (CALPIRG), issued a playground safety survey. Although the survey included playgrounds located throughout the United States, 58 randomly selected playgrounds in California were included in the survey. Their findings included:

- Surfacing. Protective surfacing, under and around equipment, is the most critical safety feature. Ninety percent of the California playgrounds surveyed (52 out of 58), had dangerously hard surfaces or an inadequate amount of protective material (less than 9 inches of loose fill or synthetic surface) around swings, slides, and jungle gyms.
- Fall Zones. A fall zone is the area under and around playground equipment where a child might fall. To prevent injuries, the fall zone should have protective surfacing and be free of other equipment or obstacles where a child might fall. In about 26 percent of the cases for swings, and 39 percent of the cases for climbers and slides, the fall zones were inadequate.
- Height of Equipment. Climbers and slides should be no higher than 6 feet to prevent injury. The survey found 53 percent of the climbers and 45 percent of the slides were higher than six feet.

Additionally, local governments and other nonprofit organizations have conducted playground safety surveys. Generally, they found outdated steel and cement structures; deteriorating and rotting wooden structures; hazardous and non-functioning equipment; design features that allowed head entrapment and clothing entanglement; equipment covered with lead paint; needles, glass, and other sharp and/or harmful objects hidden in the sand covering; graffiti; sites used for drug sales and other illegal activities; poor maintenance; and an overall lack of cleanliness.

RELATED BILLS

AB 705 (Strom-Martin) is similar to AB 1055. Among other things, AB 705 would include building and construction materials, outdoor furniture, and landscaping materials within the definition of recycled products for purposes of procurement requirements by the Legislature and State agencies, and contractor certification of materials for State jobs. AB 705 passed the Assembly Appropriations Committee (13-8) on May 30, 1997, and passed the Assembly Floor (60-18) on June 5, 1997. This bill

is currently in the Senate Rules Committee for policy committee assignment. AB 705 was heard before the CIWMB meeting on April 24, 1997. The CIWMB has reviewed AB 705 and could not reach a position for this measure. Therefore, the CIWMB has no position on AB 705. Existing law requires the CIWMB to have an affirmative vote of at least four members for the transaction of any business of the Board (Public Resources Code [PRC] §40410).

SB 2 (Thompson) is also similar to AB 1055. SB 2 would enact the Parks and Resources Improvement Bond Act of 1998 which would authorize the issuance of general obligation bonds in the amount of \$495.5 million. These bonds would finance the rehabilitation and enhancement of park, recreational, cultural, historical, fish and wildlife, lake riparian, reservoir, delta, river, and coastal resources. The bond act would be submitted to the voters at the November 3, 1998 general election. SB 2 is an urgency measure. SB 2 was held in the Senate Appropriations Committee on May 29, 1997. The CIWMB has reviewed SB 2 and could not reach a position for this measure. Therefore, the CIWMB has no position on SB 2. Existing law requires the CIWMB to have an affirmative vote of at least four members for the transaction of any business of the Board (PRC §40410).

EXISTING LAW

Existing Federal Law (The Americans with Disabilities Act of 1990, Public Law 101-336):

1. Guarantees equal opportunity for persons with disabilities in employment, public; and private services, transportation, and communications (42 U.S.C. § 12101 et seq.).
2. Requires that public playground facilities be assessable to persons with disabilities (42 U.S.C. § 12101 et seq.).

Existing State law:

1. Authorizes CIWMB, upon appropriation by the Legislature in the annual Budget Act, to make "low-interest loans" from the Recycling Market Development Revolving Loan Subaccount to local governing bodies and to private businesses within Recycling Market Development Zones (RMDZs) to help reindustrialize California by promoting economic development of businesses that use postconsumer or secondary waste materials in manufacturing new products (PRC § 42000 et seq.).
2. Authorizes CIWMB to provide grants, subsidies and loans for alternative uses for used tires including, but not limited to playground equipment from the California Tire Management Recycling Management Fund to businesses or other enterprises, and public entities, involved in activities and applications that result in reduced landfill disposal of used whole tires and reduced illegal disposal or stockpiling of used whole tires (PRC §'s 42870 et seq.).
3. Requires the DHS to develop new safety requirements for public playground facilities (Health and Safety Code § 115725).
- 28 4. Requires public agencies to upgrade their playgrounds by replacement or improvement to meet the new safety regulations by January 1, 2000 (Health and Safety Code § 115730).

ANALYSIS

AB 1055 would:

1. Declare legislative intent regarding playground injuries, the prevention of closure of public playgrounds by assisting public agencies in meeting the requirements of State and Federal law with regard to playground facilities, and creating a market for recycled materials by providing a financial incentive for public agencies to incorporate the use of recycled materials in their playgrounds;
2. Define "playground" as an improved outdoor area designed, equipped, and set aside for children's play that is not intended for use as an athletic playing field or athletic court, and includes in that area such facilities as play equipment, surfacing, fencing, signs, internal pathways, internal land forms, vegetation, and related structures;
3. Enact the Safe Playground Facilities and Recycled Materials Act of 1997, which would establish the safe playground facilities and recycled materials grant program administered by the Department of Health Services (DHS), to provide grants to public agencies to upgrade, repair, refurbish, install, or replace public playground facilities;
4. Create the Safe Playground Facilities and Recycled Material Fund, which could be continuously appropriated to DHS for the purpose of providing grants;
5. Require the DHS, in consultation with the State Department of Education (SDE), Department of Parks and Recreation, the CIWMB, the League of California Cities, the California State Association of Counties, the California Parks and Recreation Society, and other appropriate entities, including, but not limited to, beverage container recyclers, waste haulers, special districts, school districts, county superintendents of schools, nonprofit organizations, and private companies, to develop a program to provide grants to public agencies to upgrade, repair, refurbish, install, or replace public playground facilities and promote the use of recycled materials in those playground facilities;
6. Provide that the purpose of the grant program is to prevent childhood injuries on public playgrounds, while developing a market for recycled materials suitable for use in public playgrounds;
7. Require the DHS to administer the grant program and award grants to public agencies, including, but not limited to, schools, school districts, cities, counties, cities and counties, and special districts for the purpose of improving or replacing their public playgrounds;
8. Provide that no grant exceed the sum of \$25,000 for any one playground;
9. Require a public agency, in order to be eligible for a grant, to:
 - a. Demonstrate its ability to provide a 50 percent match, either through public or private funds or in-kind contributions, unless the director of DHS waives the matching

requirement based on the financial ability of the agency to meet the required match;
and

- b. Guarantee that 50 percent of the grant funds will be used for the improvement or replacement of playground equipment or facilities through the use of recycled materials;
10. Require DHS to adopt emergency regulations to implement the provisions of this bill; and
 11. Provide provisions of this bill will be implemented only if funds are appropriated for deposit into the Safe Playground Facilities and Recycled Material Fund.

COMMENTS

CIWMB Responsibilities Under AB 1055. As currently written, AB 1055 will not directly affect the CIWMB and its programs. The CIWMB would be required to assist the DHS by providing information or technical assistance on recycled materials and recycled-content products. No source of funding is identified for this purpose in the bill. However, this would not be a new responsibility for the CIWMB. This information is already provided through the CIWMB's Waste Prevention and Market Development Division, the Buy-Recycled Program and School Education and Assistance Program.

Previous Versions of AB 1055. Previous versions of AB 1055 had the CIWMB take a greater role in the playground equipment grant program. AB 1055 would have required the CIWMB, in consultation with the Department of Conservation (DOC), the State Department of Education (SDE), the State Department of Health Services (DHS), the League of California Cities, the California State Association of Counties (CSAC), and other appropriate entities, to develop a program to promote the use of recycled materials in playground design, construction, and installation. Additionally, the bill would have required the CIWMB to provide grants to local agencies to replace or improve playground facilities through the use of recycled materials.

Use of Recycled Materials in Playground Equipment. The Integrated Waste Management Act mandates 50 percent waste diversion from solid waste landfills by the year 2000. One of the critical keys to reach this goal is to develop markets for recycled materials. Recycled materials that have manufactured into commodities can be used to construct playgrounds. For example, a playground in Vallejo is made up of 85 percent recycled materials. Generally, such playgrounds contain: (1) molded plastics from recycled soda bottles and milk containers for slides, play stations, park benches, and climbing equipment; (2) used tires for playground surfacing and rubberized asphalt; (3) metals from aluminum and tin cans for playground equipment bracing, fasteners, and posts; and (4) green materials from yard debris turned into compost and mulch for surfacing and soil amendments.

CIWMB Grants for Playground Equipment. In FY 1996-97, the CIWMB allocated \$332,579 and in FY 1997-98 the CIWMB will allocate \$300,000 to local governments and school districts for grants from the California Tire Recycling Management Fund Market Development program to install playground cover containing crumb rubber from waste tires.

Cost of Playground Matting Manufactured from Used Tires. According to BAS, Inc., a company that received a \$100,000 tire grant in 1992-93 to develop rubber playground matting, a playground mat is comprised of 2' x 2' x3' tiles which use 28 pounds of rubber removed from three tires and costs about \$6.50. Therefore the cost to cover 1500 square feet is \$9,750, or roughly \$10,000.

SUGGESTED AMENDMENTS

The committee may wish to consider an amendment to add legislative intent language that would help individuals see the correlation between recycling their waste and products manufactured from recycled-content materials.

LEGISLATIVE HISTORY

AB 1055 was introduced on February 27, 1997. The author was granted a rule waiver to hear the bill past the fiscal deadline. AB 1055 is set to be heard before the Assembly Health Committee on June 17, 1997.

Support: San Diego Unified School District
Sierra Club

Oppose: None on file.

FISCAL AND ECONOMIC IMPACT

As currently written, this bill will have a minor, absorbable fiscal impact on the CIWMB and its programs. The CIWMB will only consult with DHS on issues related to this grant program. The need for staff to implement this bill does not exist in the current version of this bill. The consultation between the DHS and the CIWMB will be a matter of the normal business activity of the CIWMB. Additional staff will not be needed and the fiscal impact will be absorbed within the normal business activity of the CIWMB.

The source of funding for this legislation to be appropriated by the Legislature is not identified. Further, the language in the bill indicates that the Safe Playground Facilities and Recycled Materials Act of 1997 will be implemented only if funds are appropriated by the Legislature for deposit in the Safe Playground Facilities and Recycled Materials Fund.

However, there is a possibility of further grants from the CIWMB Tire Recycling Fund to public entities, for the installation of playground cover containing crumb rubber from waste tires. How many grants and the amount of the grants is unknown at this time.

If the bill were enacted, it could have a positive economic effect on local governmental entities and school districts who would be able to comply with law that requires them to upgrade their playgrounds by replacement or improvement to meet the new safety regulations by January 1, 2000.

**SUGGESTED AMENDMENTS
AB 1055 (VILLARAIGOSA)
AS AMENDED ON MAY 19, 1997**

The CIWMB suggests the following amendment be made to AB 1055:

On page 3, after line 34, add the following language:

- (k) As a requirement of receiving a grant for playground facilities, public agencies and schools should include signs at their facilities stating that playground equipment was made from recycled materials and the quantity of the recycled materials used.

Board	Author	Bill Number
California Integrated Waste Management Board	Cardoza	AB 1513
Sponsor	Related Bills	Date Amended
Thermo Ecotech	AB 1179 (Woods) SB 1216 (Costa)	May 1, 1997

BILL SUMMARY

AB 1513 would provide tax credits under the Personal Income Tax and Bank and Corporation Tax laws in the amount of \$30 for each ton of agricultural prunings delivered without charge by a grower to a biomass conversion facility, in a form suitable for biomass conversion at the facility. The bill would not apply to commercial timber harvesting. AB 1513 is an urgency measure.

BACKGROUND

AB 1513 is sponsored by Thermo Ecotech. This company operates three biomass plants, which burn agricultural prunings.

According to the author, AB 1513 is designed to create a financial incentive for alternative source energy generation, an activity that he fears will suffer in the electrical energy industry restructuring required by AB 1890 (Brulte, Chapter 854, Statutes of 1996). Chapter 854 provides the foundation for restructuring the regulatory framework for California's electric power industry. Of interest to the CIWMB, this law requires the Secretary of the Cal/EPA to report to the Legislature by March 31, 1997, on public policy strategies to ensure retention of economic and environmental benefits of solid-fuel biomass industry, while promoting the reduction in ratepayer costs for electric power.

Additionally, similar legislation was enacted last year (Lockyer, SB 38, Chapter 954, Statutes of 1996), which created a tax credit for rice straw. The "rice straw" credit gives a \$15 per ton Personal Income Tax and Bank and Corporation Tax credit for purchases of California-grown rice straw used for energy generation, etc., but expressly excludes open burning. Thus, growers get a tax credit for not burning California rice straw.

In 1996, AB 3345 (Bustamante, Chapter 991, Statutes of 1996) was enacted to require the CIWMB, by December 31, 1997, to conduct a feasibility study on expanding the use of agricultural and forest waste in the manufacture of commercial products. According to the

Departments That May Be Affected Department of Food and Agriculture Franchise Tax Board		
Committee Recommendation	Committee Chair	Date

sponsors. the purpose of Chapter 991 was to identify the economic benefits of the productive use of agricultural and forest waste in the development of commercial products composed of these recycled materials. The sponsor believed that the study would help engender stronger pro-recycling political support from areas and communities where it does not presently exist. The CIWMB is in the process of preparing this report.

Currently only a small portion of the agricultural waste generated every year is disposed in California's landfills. Most of this waste is either burned in the field, burned in wood waste powerplants or left in the field or forest. A small amount is used in the manufacture of wood or other commercial products.

RELATED BILLS

This is one of three bills that provide support, directly or indirectly, the biomass industry. The CIWMB has not taken a position on any of these bills. The other bills are:

- AB 1179 (Woods), which would require the Department of Forestry and Fire Protection (CDF) to develop, in consultation with the Department of Fish and Game (DFG), the State Water Resources Control Board (SWRCB), the biomass power industry and other interested parties, a strategic statewide plan to promote the rehabilitation and restoration of significant state watersheds by reducing the level of natural vegetation in watersheds. AB 1179 was introduced on May 28, 1997. The bill passed the Assembly Natural Resources Committee (9-0) on April 21, 1997, and was sent to the Assembly Appropriations Committee Suspense File on May 21, 1997. The bill was held in the Assembly Appropriations Committee on May 30, 1997.
- SB 1216 (Costa), which would make a statement of legislative intent relating to financial assistance for the biomass power industry in recognition of the value of public benefits of the biomass power industry and the negative economic and environmental consequences that would occur in its absence. SB 1216 failed passage before the Senate Revenue and Taxation Committee (3-5) on May 7, 1997; the author was granted reconsideration. The bill passed the Senate Revenue and Taxation Committee (6-0) on May 21, 1997, and was referred to the Senate Appropriations Committee. No hearing date has been set.

EXISTING LAW

Existing State law:

1. Provides a variety of tax credits under the Personal Income Tax Law (Revenue and Taxation Code [RTC] §'s 17001 et seq.)
2. Provides a variety of tax credits under the Bank and Corporation Tax Law (RTC §'s 23001 et seq.).
3. Provides a \$15 per ton credit for purchase of rice straw (RTC § 17052.10).

ANALYSIS

AB 1513 would:

1. Provide tax credits under the State Personal Income Tax and the Bank and Corporation Tax laws in the amount of \$30 for each ton of agricultural prunings delivered without charge by a grower to a biomass conversion facility, in a form suitable for biomass conversion at the facility;
2. Provide that any deduction for the expense of delivering prunings shall be reduced by the amount of credits allowed;
3. Define "facility for biomass conversion" by reference to Public Resources Code § 40106: the controlled combustion (when separated from solid waste and used for producing electricity or heat) of agricultural crop residue, park/lawn/yard/garden clippings, leaves, wood, wood chips and wood waste;
4. Define "grower" as the owner or operator of an agricultural facility that produces prunings in the normal course of producing agricultural products;
5. Provide that owner-operators of biomass conversion facilities shall not be considered growers;
6. Define agricultural "pruning" as "the removal of branches, limbs, buds or flowers from a tree grown in California in order to make the tree more vigorous and productive in accordance with standard agricultural practices;
7. Provide that the tax credit would not apply to commercial timber harvesting;
8. Require the Department of Food and Agriculture (DFA) to:
 - a. Certify that the taxpayer or a third-party hauler action on behalf of the grower has delivered the prunings based upon records and other information submitted by the taxpayer to the DFA;
 - b. Issue certificates to taxpayers certifying the delivery of qualified biomass prunings; and
 - c. Provide an annual list of qualifying taxpayers/taxpayer identification numbers to the Franchise Tax Board (FTB).

COMMENTS

Amount of Orchard Prunings. As much as 1.2 million tons of agricultural prunings, primarily almond and walnut orchards, are burned annually in biomass powerplants. This is about one-sixth of all biomass burned (includes forest and urban wastes) in the 30 operating biomass conversion facilities. As much as 95 percent of fruit and nut crop prunings are burned in the fields. The CIWMB estimates that approximately 39.8 million tons of solid waste are disposed of annually at solid waste facilities.

Only a small portion of the agricultural waste generated every year; approximately .2 percent or 69.898 tons, is disposed of at solid waste landfills,. Most agricultural waste is either burned in the field or in wood waste powerplants or left in the fields. There are other possible outlets for some of the materials going to biomass facilities, such as composting, mulching, and/or land spreading.

Waste Diversions and Environmental Benefits. The CIWMB is supportive of activities aimed not only at preventing residues from agricultural cropping activities from being landfilled, but also providing the basis for new enterprise development particularly in rural counties throughout California. The CIWMB has supported numerous agricultural projects including a rice straw bale soundwall and the use of rice straw in paper product applications. Further by finding alternative uses for residues from agricultural cropping activities, there is the added benefit that this material will not be disposed in solid waste landfills and more importantly, this material will not be burned in the field, which will greatly decrease air pollution.

Use of Biomass as Part of the Source Reduction and Recycling Elements. From the time the Integrated Waste Management Act was enacted in 1989 until the passage of AB 688 (Sher, Chapter 1227, Statutes of 1994), biomass was not part of the CIWMB's waste stream and typically was not included in jurisdictions' planning documents such as Source Reduction and Recycling Elements. With the enactment of Chapter 1227, jurisdictions may use biomass for up to 10 points of the 50 percent diversion goal in the year 2000. The CIWMB will be developing regulations to implement a reporting system for biomass facilities prior to the year 2000, so that this credit can be applied. These draft regulations are expected to be released for informal public comment in June 1997.

Effect on Solid Waste Diversion. Currently, there is no accurate information on the number of jurisdictions relying on biomass conversion facilities to handle a portion of their waste streams. However, the CIWMB estimates the majority of jurisdictions send some material to biomass facilities. The amount and proportion of the waste stream sent by jurisdictions to biomass facilities varies greatly. For a few, a very large percentage of their waste stream (such as forest waste or agricultural wastes) goes to biomass. For many others, biomass would represent a small portion and would not significantly impact goal achievement.

Biomass Facilities Reduce Air Pollution. As much as 95 percent of fruit and nut crop prunings are burned in the field. The California Biomass Energy Alliance (CBEA) has asserted that the open-field burning of prunings is a major source of particulate matter in the Central Valley. According to CBEA, controlled combustion of prunings at biomass facilities substantially reduces air pollution. However, chipping and transporting the prunings costs approximately \$30 per ton. The sponsor argues that most farmers will not transport their orchard prunings to biomass facilities because they are unwilling to pay \$30 per ton to dispose this material and with the end of energy subsidies (the restructuring of the electrical industry through AB 1890 of last year), biomass facilities will not purchase prunings from farmers at \$30 per ton.

Dry versus Wet Tons of Material. AB 1513 does not distinguish between dry and wet tons. The biomass powerplant industry uses bone dry tons as the standard of measure. A fuel supplier may have to deliver as much as 1.4 wet tons to have a bone dry ton.

Price of Biomass Fuel. Currently, the average price of biomass fuel is about \$25 per bone dry ton. Given the average moisture content of about 30 percent for agricultural fuels, the price is about \$32 to \$35 per wet ton. The process of chipping agricultural prunings has been estimated to cost about \$30 to \$35 per wet ton. The cost of transportation is estimated to be \$5 to \$15 per ton with haul distances of up to about 50 miles in each direction. This means that the cost of fuel, as delivered, would be between \$35 and \$50 per wet ton. A \$30 per ton tax credit against California income tax liability translates into a reduction of processing costs to about \$33 per ton.

Duration of Tax Credit. The credit in this bill will be in effect from January 1, 1998, through December 1, 2008. However, any credits not used in one of these years may be carried over for the next ten years, or until the credit has been exhausted, whichever comes first. This ten-year limitation on the number of years in which the credit may be carried over is identical to the period in the "rice straw" credit, and is consistent with the 8-, 10- or 15- year periods in other California credits.

Effect on Diversion Mandates. The proposed legislation could impact the ability of communities that have biomass conversion facilities to meet the 50 percent diversion mandate by the year 2000. Reducing the cost of agricultural prunings would probably increase the amount of agricultural waste delivered to biomass conversion facilities. There could be a negative impact on diversion mandates if the cheaper agricultural waste fuels displace more expensive urban wood waste fuels, which in turn end up in landfills. Wood waste comprises 3.37 million tons or 8.5 percent of the waste stream.

Possible Reopening of Closed Biomass Facilities. Another potential impact of reducing the processing cost of agricultural prunings is that the additional supply of fuel may result in the reopening of some of the currently closed biomass facilities. This could increase the amount of urban wood waste currently being consumed in biomass powerplants. If some of the closed plants reopened, the volume of urban wood waste burned is expected to increase. The closing of over a dozen biomass plants in the last few years resulted in a great reduction in the amount of urban wood waste (40 percent) and agricultural wastes (25 percent) being burned at biomass plants. An increase in the volume of urban wood waste going to biomass conversion facilities could assist some communities toward the 50 percent diversion requirement.

Agricultural Prunings as a Feedstock Material. An alternate use for agricultural prunings is as a feedstock for the manufacture of new products including, but not limited to, fiberboard, pallets, sheeting, tiles, insulation and compost. The relatively high cost of collecting, processing and transporting agricultural wastes reduces their use as a feedstock. The CIWMB believes that the proposed tax credit could also benefit non-energy uses of agricultural wastes.

General Fund Revenue Loss. The Franchise Tax Board (FTB) estimates that AB 1513 would result in a General Fund revenue loss of less than \$250,000 in 1997-98, \$500,000 in 1998-99, and \$1 million in 1999-2000.

SUGGESTED AMENDMENT

The committee may wish to consider a technical amendment to clarify whether the ton will be measured as "wet" or "dry." It takes as much as 1.4 wet tons to make one dry ton.

LEGISLATIVE HISTORY

AB 1513 was introduced on February 28, 1997. The bill passed the Assembly Revenue and Taxation Committee (11-0) on May 12, 1997, passed the Assembly Appropriations Committee (21-0) on May 30, 1997, and passed the Assembly Floor (74-4) on June 3, 1997. The bill has been referred to the Senate Rules Committee for policy committee assignment.

Support: Thermo Ecotech (sponsor)
 Amador County Air Pollution Control District
 San Joaquin Valley Unified Air Pollution District
 Sacramento Air Quality Management District
 Agricultural Council of California
 Rio Bravo Fresno
 California Walnut Commission
 Tracy Operators
 Blue Diamond Growers
 Wilson Ag
 Family Winemakers of California
 Clean Power Campaign
 Sierra Club of California
 Planning and Conservation League

Oppose: California Tax Reform Association
 Department of Finance

FISCAL AND ECONOMIC IMPACT

AB 1513 would not have a direct fiscal impact on the CIWMB and its programs. AB 1513 deals with tax legislation for agricultural businesses.

By providing a tax credit for agricultural prunings that are delivered to biomass powerplants, enactment of AB 1513 could provide the incentive for farmers to transport this material to biomass powerplants rather than open-field burning the agricultural prunings in the field. This could help decrease air pollution, particularly in the Central Valley.

Author	Bill Number
California Integrated Waste Management Board	SB 451
Sponsor	Related Bills
State Bar of California	SB 1113 (Solis), SB 906 (Lee)
	Date Amended
	May 7, 1997

BILL SUMMARY

SB 451 would require local governments' general plans to include policies for the equitable distribution of facilities for solid wastes, hazardous wastes, and liquid wastes to avoid disproportionate effects on low-income communities as well as racial and ethnic minorities.

BACKGROUND

SB 451 is sponsored by the State Bar Conference of Delegates, which asserts that recent research indicates that waste facilities are more common in low-income and minority communities. Sponsors assert that local officials should show more concern for the health and safety of low-income and minority communities when planning waste facilities.

Cities and counties must adopt integrated waste management plans that address the issue of reducing, recycling, and disposing of solid wastes. An integrated waste management plan must also identify specific locations or general areas for existing and proposed facilities for processing, composting, transforming, and disposing of solid wastes. These facilities must be consistent with the local general plans. Household hazardous waste elements are part of these integrated waste management plans.

Cities and counties must adopt general plans with seven specified elements, including a land use element. The land use element must designate general locations for a wide variety of land uses, including solid and liquid waste disposal facilities. Local officials can adopt optional elements into their general plans. Major land use decisions -- zoning, subdivisions, public works, use permits -- must be consistent with general plans.

RELATED BILLS

SB 1113 (Solis) would require the Office of Planning and Research, by January 1, 1999, to

Departments That May Be Affected		
Department of Toxic Substances Control, State Water Resources Control Board		
Committee Recommendation	Committee Chair	Date

recommend proposed changes in, and the Secretary of the Resources Agency to certify and adopt revisions to, the CEQA guidelines to provide for the identification and mitigation by public agencies of disproportionately high and adverse environmental effects of projects on minority populations and low-income populations. SB 1113 has been referred to the Senate Floor.

SB 906 (Lee) would require county general plans to include an analysis of the expected rates of hazardous waste production until 1999, and would additionally require the county plan to include specified information regarding the demographics of the community within a 10-mile radius of each hazardous waste stream and facility, and the consideration of specified environmental equity goals. SB 906 was set to be heard by the Senate Environmental Quality Committee on April 21, 1997, but was taken off calendar.

EXISTING LAW

State Law:

1. Requires each planning agency and the legislative body of each county and city to adopt a comprehensive, long-term general plan for the physical development of the county or city and land outside its boundaries which, in the judgment of the planning agency, relates to its planning (Government Code §65300).
2. Requires the general plan to contain, among other elements, a land use element that designates the proposed general distribution, general location and extent of the uses of the land for housing, business, industry, open space, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land (Govt. Code §65302).
3. Requires the California Integrated Waste Management Board to object to the issuance of a solid waste facility permit if the permit is not consistent with Division 31 (commencing with Section 51000) of the Public Resources Code [PRC §44009 (a) (2)]; in part, Division 31 prohibits, until a countywide integrated waste management plan is approved by the CIWMB, the creation or expansion of a solid waste facility unless the host city or county finds that the facility is consistent with its adopted general plan. (PRC §50000.5).
4. Requires each county to prepare a countywide site element to describe areas of the county to be used for transformation or disposal of solid waste; requires the element to identify areas for expansion of disposal capacity if the county determines that existing capacity will be exhausted within fifteen years; requires areas designated for expansion to be consistent with the county's adopted county general plan; requires the element to contain resolutions from affected cities and the county that any area identified for expansion or new disposal facilities is consistent with the applicable general plan; and requires the county to submit countywide integrated waste management plans to the CIWMB at five-year intervals. (PRC §§41700-41704, 41720, 41770).

4. Declares that the Integrated Waste Management Act shall not infringe on the existing authority of counties and cities to control land use or to make land use decisions. (PRC §41851).

ANALYSIS

SB 451 would:

1. Require the land use element of a general plan to include policies for the equitable distribution of facilities for the transfer, storage, and disposal of solid, hazardous, and liquid wastes that avoid disproportionate effects on low-income communities as well as racial and ethnic minority communities. Would require the land use element to include feasible implementation measures to achieve those policies;
2. State Legislative intent (in uncodified language) that by adding the policies in #1 above, the Legislature intends that counties and cities minimize the cost of complying with the new requirements by relying on data and analysis contained in existing planning documents, including the integrated waste management plans adopted pursuant to Part 2 (commencing with Section 40900) of Division 30 of the Public Resources Code. Further, state Legislative intent that cities and counties implement the new requirements in ways that accommodate local conditions and circumstances;
3. State Legislative intent (in uncodified language) that the governing body of a city or county would not be required to include the policies in #1 above if the governing body made specific written findings that the city or county does not encompass low-income, racial, or ethnic communities that would be adversely affected by siting the facilities, or that the facilities would not be sited within the city or county during the anticipated life of the land use element; and
4. State Legislative intent (in uncodified language) that the new requirements in #1 above would apply to a city or county at the time that it next amends the land use element of its general plan or at the time of the next periodic review of the housing element of its general plan after January 1, 1999, whichever is later.

COMMENTS

Effects on CIWMB operations. SB 451 would have minimal impact on CIWMB's planning functions. Current law requires counties to submit countywide integrated waste management plans to the CIWMB at five-year intervals. Current law requires the siting element of these plans to contain resolutions from affected cities and the county that any area identified for a new solid waste disposal facility is consistent with the applicable general plan. The CIWMB ensures that these resolutions are in place and reviews any comment from other local governments attesting to conflicts between any proposed disposal facility and applicable general plans. SB 451 would require cities and counties to revise their general plans sometime after January 1999. Therefore, beginning in 1999, the CIWMB would be reviewing five-year revisions to integrated waste management plans to ensure that resolutions were in place.

SB 451 would also have minimal effect on CIWMB's permit approval functions. Under current law, for those counties that do not yet have an approved countywide integrated waste management plan, the CIWMB must object to the issuance of a solid waste facility permit unless the host city or county finds that the facility is consistent with its adopted general plan. SB 451 would require cities and counties to revise their general plans sometime after January 1999. Therefore, beginning in 1999, the CIWMB would be reviewing permit applications to ensure that host cities and counties have made the necessary findings.

Effects on CIWMB policies. SB 451 would have little impact on CIWMB policies because current law declares that the Integrated Waste Management Act shall not infringe on the existing authority of counties and cities to control land use or to make land use decisions.

Broader policy. SB 451 would establish State direction to local governments regarding land use planning. In previous sessions, Governor Wilson has vetoed other measures that would direct local governments on land use with regard to solid waste facilities, noting that the existing solid waste management planning process allows local governments to make their own decisions regarding land use planning and that existing law already prescribes an elaborate process for public review and comment and a case-by-case review of individual solid waste facility permits to ensure that the public health and environment are protected.

Effects on solid waste management. SB 451 would require cities and counties to revise their general plans sometime after January 1999 to include policies for equitable distribution of solid waste facilities to avoid disproportionate effects on low-income communities and on racial and ethnic minority communities. These policies would probably have the effect of changing the geographic distribution of solid waste facilities throughout any given county. Such changes might have economic impacts on the solid waste industry. These costs might include higher transportation costs (for example, solid waste generators and disposal facilities might be located farther apart) and higher costs to develop disposal capacity (for example, environmental mitigation costs might be higher if a site preferred for social reasons requires additional mitigation costs to address impacts on wildlife). These costs would probably be passed on to residential, commercial, and industrial solid waste generators.

LEGISLATIVE HISTORY

SB 451 was introduced on February 19, 1997. It passed the Senate Housing and Land Use Committee (4-1) on April 7, 1997, the Senate Appropriations Committee (8-2) on April 21, 1997, and the Senate (22-15) on May 12, 1997. SB 451 has been referred to the Assembly Local Government Committee (no hearing date set yet).

Three earlier bills would have required public officials to study the demographics of areas near proposed hazardous waste sites. Governor Wilson vetoed AB 937 (Roybal-Allard) in 1991 and AB 3024 (Roybal-Allard) in 1992, stating that CEQA and others laws already minimized the problem of facilities sited near low-income and minority communities. A third bill, AB 2212 (Lee) in 1994, failed on the Senate Floor on a 16-19 vote. Instead of requiring project-by-project evaluations, SB 451 takes a different approach and emphasizes long-range land use policies.

Support: State Bar of California, Conference of Delegates (sponsor)
Black Women Lawyers of Los Angeles, Inc.
American Planning Association
Sierra Club
Planning and Conservation League
BKK Corporation

Oppose: Browning-Ferris Industries
Norcal Waste Systems, Inc.
Camarillo City Council
League of California Cities
California Refuse Removal Council (CRRC)
Safety-Kleen Corporation

FISCAL AND ECONOMIC IMPACT

SB 451 would have no fiscal impact on the CIWMB.

The costs that cities and counties would incur to carry out the bill's requirements would be state-reimbursable. These would include staff costs, consultants and required hearings. The bill expresses legislative intent that these costs would be minimized by relying on existing data and analyses, and delays the bill's implementation until the first land use element amendments after 1998 or when the housing element is reviewed after 1998, whichever is later. Implementing this intent would reduce the state-reimbursable costs of the bill. These costs largely would be incurred the first time the bill's requirements had to be applied to a city or county's general plan.

LEGISLATION AND PUBLIC
EDUCATION COMMITTEE

BILL ANALYSIS

rd	Author	Bill Number
California Integrated Waste Management Board	Sher	SB 988
Sponsor	Related Bills	Date Amended
Author	AB 1273 (Woods)	Introduced

BILL SUMMARY

SB 988 would make a number of technical code clean-up clarifications within the Public Resources Code (PRC) in areas related to solid waste management or programs administered by the California Integrated Waste Management Board (CIWMB).

BACKGROUND

Most of these technical corrections come from two areas -- cleanup of AB 59 (Chapter 952, Statutes of 1995) and AB 626 (Chapter 1038, Statutes of 1996) and correction of hearing panel cross-references.

In the enactment of AB 59, PRC §45300, which related to cease and desist order for hazards, pollution or nuisances language was deleted and was moved to PRC §45005. In the move, the language in the former PRC §45300 (b) was inadvertently deleted. This language needs to be amended into the PRC.

The enactment of AB 626 posed similar problems. When sections were repealed, added, and renumbered, part of the original language was inadvertently deleted and mistakes occurred in code section referrals.

Some of the proposed amendments correct inaccurate hearing panel cross-references. When the CIWMB is acting as the enforcement agency, the appropriate hearing panel is the CIWMB hearing panel established pursuant to PRC §44309. When a local agency is acting as the enforcement agency, the appropriate hearing panel is the local hearing panel established pursuant to PRC §44308. The proposed amendments correct the cross-references.

RELATED BILLS

AB 1273 (Woods) is identical to SB 988. AB 1273, sponsored by the CIWMB, has been referred to the Assembly Committee on Natural Resources. It is not scheduled for hearing.

Departments That May Be Affected		
Committee Recommendation	Committee Chair	Date
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EXISTING LAW

State law:

1. Establishes a comprehensive program, administered by the CIWMB, for the management of solid waste in California. (The Integrated Waste Management Act. Public Resources Code §40000 et seq.)
2. Establishes a program to encourage the recycling of lubricating oil. (PRC §48600 et seq.)

ANALYSIS

SB 988 would:

1. Make technical correction to prior legislation [AB 59 (Chapter 952, Statutes of 1995) and AB 626 (Chapter 1038, Statutes of 1996)].
2. Correct inaccurate hearing panel cross-references. (PRC §45017).
3. Delete obsolete statutory text governing used oil recycling programs (the Used Oil Recycling Act and the Used Oil Collection Demonstration Program). These programs have been superseded by the California Oil Recycling Enhancement (CORE) Act (PRC §§48600-48695).

COMMENTS

SB 988 would provide necessary technical code clean-up amendments to the Public Resources Code. These amendments will make effective implementation of the CIWMB's programs more easily attainable.

LEGISLATIVE HISTORY

SB 988 was introduced on February 27, 1997; passed by Senate Committee on Environmental Quality (7-0) on April 2, 1997; passed by Senate Committee on Appropriations (Rule 28.8) on May 12, 1997; passed by the full Senate (37-0) on May 23, 1997; and forwarded to the Assembly.

Support: Norcal Waste Systems, Inc.

Opposition: None on file.

FISCAL AND ECONOMIC IMPACT

SB 988 would result in minor, absorbable cost to the CIWMB for updating regulations. The bill would have no economic impact on businesses or local governments.

LEGISLATION AND PUBLIC
EDUCATION COMMITTEE

BILL ANALYSIS

rd	Author	Bill Number
California Integrated Waste Management Board	Solis	SB 1113
Sponsor	Related Bills	Date Amended
Author	SB 451 (Watson), SB 906 (Lee)	May 29, 1997

BILL SUMMARY

SB 1113 would require the Office of Planning and Research, by January 1, 2000, to recommend changes to the California Environmental Quality Act guidelines to provide for the identification and mitigation by public agencies of disproportionately high and adverse environmental effects of projects on minority populations and low-income populations. The bill would also require the Secretary of Resources Agency to certify and adopt those recommended changes by January 1, 2000.

BACKGROUND

Senator Solis is carrying SB 1113 without a sponsor. This bill is intended to incorporate considerations of equity and fairness in the administration of environmental laws. Use of CEQA to address issues of equitable distribution of controversial projects with potential environmental effects was suggested by attorney D. Dwight Worden in the Winter 1993 issue of *Land Use Forum*, published by University of California for the Continuing Education of the Bar.

RELATED BILLS

SB 451 would require local governments' general plans to include policies for the equitable distribution of facilities for solid wastes, hazardous wastes, and liquid wastes to avoid disproportionate effects on low-income communities as well as racial and ethnic minorities. SB 451 was introduced on February 19, 1997; passed by Senate Housing and Land Use Committee (4-1) on April 7, 1997; passed by Senate Appropriations Committee (8-2) on April 21, 1997; passed by the full Senate (22-15) on May 12, 1997; and referred to the Assembly Local Government Committee (no hearing date set yet).

SB 906 (Lee) would require county general plans to include an analysis of the expected rates of hazardous waste production until 1999, and would additionally require the county plan to include specified information regarding the demographics of the community within a 10-mile

Departments That May Be Affected		
Office of Planning and Research, Resources Agency, and all departments that are lead agencies under CEQA		
Committee Recommendation	Committee Chair	Date
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radius of each hazardous waste stream and facility, and the consideration of specified environmental equity goals. SB 906 was set to be heard by the Senate Environmental Quality Committee on April 21, 1997, but was taken off calendar.

EXISTING LAW

State law:

1. Requires lead agencies with the principal responsibility for carrying out or approving a proposed project subject to CEQA to prepare an environmental impact report, negative declaration, or mitigated negative declaration for this action, unless the action is exempt from CEQA. (PRC §21100).
2. Requires the Office of Planning and Research (OPR) to review the CEQA guidelines at least every two years and recommend proposed changes to the Secretary of the Resources Agency, who must certify and adopt the guidelines pursuant to the Administrative Procedure Act. (PRC §21083).
3. Requires local governments to comply with CEQA requirements when submitting solid waste planning documents to the CIWMB [14 CCR §§18768 (a) (1) and 18784 (a) (6)].

ANALYSIS

SB 1113 would:

1. Adopt legislative findings and declarations that people of all races, cultures, and income must be treated fairly with respect to environmental laws and policies;
2. Require the Office of Planning and Research, by January 1, 2000, to recommend changes to the California Environmental Quality Act guidelines to provide for the identification and mitigation by public agencies of disproportionately high and adverse environmental effects of projects on minority populations and low-income populations;
3. Require the Secretary of Resources Agency to certify and adopt those recommended changes by January 1, 2000;
4. Require the Office of Planning and Research, in consultation with other State agencies, to review databases and other documents, by January 2000, to identify communities and populations affected by disproportionately high and adverse environmental effects of projects;
5. Require the Office of Planning and Research and the Secretary of Resources Agency to rely on procedures that implement federal Executive Order 12898, on environmental equity, to meet the requirements of the bill; and

6. Exempt projects in "frontier counties" from the guidelines adopted pursuant to this bill: would define frontier counties as those with population less than 35,000 in January 1997, with at least 50% of its area owned by the federal government, and with fewer than 250 residential building permits issued in 1995.

COMMENTS

Effect on CIWMB operations. SB 1113 would have minimal effect on the CIWMB's planning functions. Under current law, local governments must comply with CEQA requirements and prepare appropriate environmental documentation when submitting solid waste planning documents to the CIWMB. In most circumstances, local governments submit negative declarations with their planning documents. Because solid waste planning documents have virtually no environmental effects, SB 1113 would have no effect on CIWMB planning functions.

Further, SB 1113 would have minimal impact on CIWMB's permit approval functions. The CIWMB functions as a responsible agency under CEQA for solid waste facilities. That is, the CIWMB reviews environmental documents (such as environmental impact reports or negative declarations) prepared by local governments with approval authority over solid waste facilities. Typically, this local government authority is over land use, and the local government prepares environmental documentation when a solid waste facility operator wishes to site a new facility or change the design of an existing facility. In these cases, the CIWMB reviews the local government's environmental documentation and comments on those portions that are relevant to the CIWMB's regulatory authority. SB 1113 would indirectly require local governments' environmental documentation to identify and provide for mitigation of environmental effects on minority populations and low-income populations. The CIWMB's comments would probably be limited to solid waste matters and probably would not extend to discussion of appropriate mitigation measures.

The CIWMB functions as lead agency under CEQA for waste tire facility permits. In this circumstance, SB 1113 would indirectly require the CIWMB's environmental documents to identify and provide for mitigation of environmental effects on minority populations and low-income populations.

SB 1113 may have some effect on CIWMB operations by requiring the CIWMB to review its databases, in cooperation with the Office of Planning and Research, to identify communities and populations affected by disproportionately high and adverse environmental effects of projects. However, no database at the CIWMB contains this type of specific information.

Effect on solid waste management.

The effects of SB 1113 on solid waste management are indefinite. The bill appears to rest on an assumption that, under current CEQA guidelines, governments are ignoring significant effects from projects on some human populations and approving projects without requiring adequate mitigation or consideration of alternatives, such as relocation of the project. If the guidelines required by this bill cause significant changes in the location of, or mitigation of

the effects of, solid waste management facilities, then SB 1113 might increase the overall costs of solid waste management.

LEGISLATIVE HISTORY

SB 1113 was introduced on February 28, 1997; passed by Senate Committee on Environmental Quality (5-2) on April 21, 1997; passed by Senate Committee on Appropriations (8-4) on May 12, 1997; passed by the full Senate (21-16) on June 3, 1997; and forwarded to the Assembly.

Three earlier bills would have required public officials to study the demographics of areas near proposed hazardous waste sites. Governor Wilson vetoed AB 937 (Roybal-Allard) in 1991 and AB 3024 (Roybal-Allard) in 1992, stating that CEQA and others laws already minimized the problem of facilities sited near low-income and minority communities. A third bill, AB 2212 (Lee) in 1994, failed on the Senate Floor on a 16-19 vote.

Support: Community Coalition for Change, Inc.
 Natural Resources Defense Council
 California League of Conservation Voters
 Communities for a Better Environment
 Environmental Working Group
 Los Angeles Conservation Corps
 Mexican-American Legal Defense and Educational Fund
 Sierra Club
 Planning and Conservation League

Opposition: California Chamber of Commerce
 Department of Finance
 Association of California Water Agencies

FISCAL AND ECONOMIC IMPACT

SB 1113 would have minor, absorbable cost impact on the CIWMB from the Integrated Waste Management Account. The bill would require the CIWMB to consult with Office of Planning and Research on databases in CIWMB's control that might identify communities and populations affected by disproportionately high and adverse environmental effects, but the costs of this consultation effort would be minor and absorbable.

SB 1113 might increase the overall costs of solid waste management, if the revisions to CEQA guidelines required by this bill cause significant changes in the location of, or mitigation of the effects of, solid waste management facilities. These costs would probably be passed on to residential, commercial, and industrial solid waste generators in the form of higher rates for solid waste services.